

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Moti Restaurant, c/o Arash Hashemkhani
82 Snell Street
Massapequa, NY 11758

Property owner: Grandonico Properties, LLC
25 North Pleasant Street, Amherst, MA, 01002

Date application filed with the Town Clerk: May 11, 2010

Nature of request: To expand the existing Class II restaurant operating under Special Permit ZBA FY2007-00020 into the adjacent space, add the service of alcohol, thereby establishing a new Class II restaurant, under Section 3.352.1 of the Zoning Bylaw

Address: 25 North Pleasant Street (Map 14A, Parcel 50, B-G Zoning District)

Legal notice: Published on May 12, 2010 and May 19, 2010 in the Daily Hampshire Gazette and sent to abutters on May 11, 2010

Board members: Tom Simpson, Hilda Greenbaum, Mark Parent

Submissions:

- Project Application Report, dated May 21, 2010;
- ZBA application, filed with the Town Clerk on May 11, 2010;
- The proposed Management Plan;
- A proposed floor plan, received on May 26, 2010;
- A proposed sign plan, with measurements, received on May 26, 2010;
- The previous Special Permit, ZBA FY2007-00020, with the approved sign plan and Management Plan for Moti;
- Fire Department letter, dated May 12, 2010;
- Design Review Board memorandum, dated June 4, 2010.

Site Visit: May 26, 2010

Tom Simpson, Hilda Greenbaum and Mark Parent met at the site. The Board members observed the following:

- The existing restaurant located on the ground floor of a four-story brick building on the east side of North Pleasant Street;
- The existing interior of the restaurant including seating area, kitchen, restroom, storage room (where waste oil will be stored), emergency fire escape, and approximate location of a proposed doorway into the adjacent space;
- The existing exterior of the restaurant including the existing projecting “banner” sign, existing “Moti” sign and three exterior gooseneck lights;

- The existing exterior of the adjacent space formerly occupied by Bucci salon;
- The interior of the adjacent space including the approximate location of the proposed doorway, bathroom and bar area.

Public Hearing: May 27, 2010

The public hearing on this date was rescheduled to June 24, 2010 due to the closing of Town Hall as a result of a power outage.

Public Hearing: June 24, 2010

Mr. Hashemkhani presented the application. He stated the following:

- The existing restaurant is operating under a previous Special Permit with seating for 16 people and no alcohol service;
- The request is to expand the existing restaurant into the adjacent space and provide alcohol service;
- The proposed changes are as follows:
 - Increase the number of seats from 16 in the existing space to a total of 45 seats in both spaces;
 - Increase the number of employees from three (3) to four (4);
 - Create a 48" doorway to allow patrons to enter the new seating area, labeled area "B" on the floor plan;
 - Add the service of alcohol until 11 p.m.;
 - Close area "B" at 11 p.m. to avoid triggering additional building code requirements;
 - Install a lockable metal gate to prevent patrons from entering into space "B" after closing.
- The sign will consist of the red "Moti" lettering and the projecting banner sign mounted on the building;
- A waiver is requested to allow the total sign size to exceed the maximum allowed. The total size of the two (2) signs is 18% where 10% is allowed. The "Moti" lettering needs to be mounted on a separate sign panel to prevent disturbance to the ceiling of the interior. The sign regulations require that the area of the entire panel be calculated and include that of the banner;
- The three (3) existing gooseneck light fixtures will be relocated and centered over the "Moti" lettering.

The Board members confirmed the following:

- The metal gate will be similar in design to the specifications submitted, and will be secured to the wall to prevent patrons from entering after it is closed;
- Area "A" will remain open until 2 a.m., with seating for a maximum of 16 patrons and take-out service with no alcohol service past 11:00 p.m.;
- The interior lights will not be dimmed as this would trigger a different, more strict classification under the Building Code;
- The staff will be responsible for litter removal in front of the space;
- The Design Review Board preferred the lettering be mounted on one continuous panel.

Ms. Greenbaum MOVED to close the evidentiary portion of the public hearing. Mr. Parent seconded the motion and the Board VOTED unanimously to close the public hearing.

Public Meeting:

The Board members discussed the sign and determined that the signs will not endanger the public safety and will not be detrimental to the neighborhood, as follows:

- The combined size of 18% is compatible and in scale with others on the street;
- Other businesses contain nearby contain signs and projecting signs;
- The sign designs were reviewed and approved by the Design Review Board;
- The projecting sign meets the minimum height requirement above the public sidewalk.

Tom Simpson MOVED to approve the signs as shown on the submitted plans, covering 18% of the façade which is more than the 10% allowed under Section 8.41 of the Zoning Bylaw. Mr. Parent seconded the motion and the Board VOTED unanimously to approve the signs as submitted on the plans received on May 26, 2010.

Specific Findings:

The Board found under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses because the use is a Class II restaurant and there are other Class II restaurants in the vicinity, some of which are open until 2:00 a.m.

10.382 and 10.385 – The proposal would not constitute a nuisance and reasonably protects the adjoining premises against detrimental or offensive uses on the site. The restaurant will operate the necessary equipment to ameliorate odor; music will be limited to the interior of the restaurant; the exterior lights will be downcast; and, the permit requires that employees monitor the area immediately around the entryway to remove litter and trash and to monitor the crowds lined up outside the entryway, as necessary.

10.383 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians. The permit requires that employees monitor any crowds that gather at the entry way, trash and litter will be removed by employees and deliveries to the restaurant are limited to certain hours.

10.384 – Adequate and appropriate facilities would be provided for the proper operation of the proposed use. The floor plan shows that there will be adequate space for patrons and for equipment to process food items. The installation of a secure gate between Section A and Section B will be used to prevent patrons from entering Section B when it is closed.

10.386 - The proposal ensures that it is in conformance with the Parking and Sign regulations. The restaurant is located within the Municipal Parking Zone and therefore has no on-site parking requirements. The sign sizes (totaling 18%, where 10% is allowed) have been approved by the Board in accordance with the submitted plan.

10.388 - The proposal ensures adequate space for off-street loading and unloading of vehicles because deliveries will be limited by the Management Plan and by the conditions of the permit and are also limited by Town Bylaws with respect to parking of trucks in the downtown area.

10.389 - The proposal provides adequate methods of disposal and /or storage for sewage, refuse, recyclables and other wastes because the building is connected with the town sewer system and the Management Plan describes how refuse and recyclables are handled, and there is a condition in the permit with respect to waste oil disposal.

10.391 and 10.395 - The proposal protects, to the extent feasible, unique or important natural, historic or scenic features and does not create disharmony with respect to the scale and architecture of existing buildings because there will be no changes to the exterior of the building other than signs, which have been approved by the Board.

10.393 –The proposal provides protection of adjacent properties by minimizing the intrusion of lighting. The relocated lighting fixtures will be downcast, in accordance with the conditions of the permit and any changes to exterior lighting shall be reviewed and approved by the Board at a public meeting.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it enhances the quality of life in the downtown. The proposal contributes to the creation of a vibrant downtown and is in harmony with the goal of the Master Plan to encourage a “sustainable, attractive town with a vital downtown and viable mixed-use village centers well connected to livable and diverse neighborhoods and campuses, and interwoven with protected open space, natural resources, and active farmland.

Public Meeting – Zoning Board Decision

Mr. Simpson moved to APPROVE the application with conditions. Mr. Parent seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit for the operation of a Class II restaurant, known as Moti, with alcohol service, under Section 3.352.1 of the Zoning Bylaw, as applied for by Arash Hashemkhani, at 25 North Pleasant Street (Map 14A, Parcel 50, B-G, MP, DR Zoning District) with conditions.

TOM SIMPSON

HILDA GREENBAUM

MARK PARENT

FILED THIS _____ day of _____, 2010 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2010.

NOTICE OF DECISION mailed this _____ day of _____, 2010
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2010,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit for the operation of a Class II restaurant, known as Moti, with alcohol service, under Section 3.352.1 of the Zoning Bylaw, as applied for by Arash Hashemkhani, at 25 North Pleasant Street (Map 14A, Parcel 50, B-G, MP, DR Zoning District) with the following conditions:

1. The interior of the restaurant shall be substantially in accordance with the floor plan approved by the Zoning Board of Appeals on June 24, 2010. Any substantial changes to the approved floor plan shall be reviewed and approved by the Zoning Board of Appeals at a public meeting.
2. The hours of operation in Section A shall be from 11:00 a.m. to 2:00 a.m., and in Section B shall be from 11:00 a.m. to 11:00 p.m., seven days a week.
3. There shall be a maximum 45 seats within the entire restaurant. After 11:00 p.m., there shall be no more than 16 seats available in Section A.
4. A gate, substantially in accordance with the design submitted, shall be installed to stop patrons from entering Section B after 11:00 p.m. Said gate shall be properly secured to the building whenever it is in use.
5. The service of alcohol is permitted within the entire restaurant up to 11:00 p.m. and shall only be served with food.
6. Any employees who serve alcohol, shall be required to complete an alcohol service training such as ServSafe Alcohol or other comparable course.
7. The restaurant shall be managed in accordance with the Management Plan approved by the Zoning Board of Appeals on June 24, 2010. Any substantial change to the Management Plan shall be reviewed and approved by the Zoning Board of Appeals at a public meeting.
8. The signs shall be in accordance with the plan approved by the Zoning Board of Appeals on June 24, 2010. Any substantial changes to the approved sign plan shall be reviewed by the Design Review Board and approved by the Zoning Board of Appeals at a public meeting.
9. There shall be a maximum of four (4) employees at any one time.
10. Music shall only be played within the building and the decibel level shall not rise above the ambient noise level at the property boundary.
11. An employee shall monitor patrons and crowd behavior on the property and shall monitor the interior gate into Section B, as needed.

12. Waste oil shall be stored in covered 5 gallon drums in the storage closet and picked up at least every two weeks.
13. Deliveries to the site shall be limited to between the hours of 8:00 a.m. and 3:00 p.m.
14. An employee shall be responsible for monitoring patrons and crowd behavior on the property and for keeping the public sidewalk in front of the establishment and within 15 feet on either side free and clear of all trash and litter associated with the establishment.
15. Upon any change of ownership, a Management Plan shall be submitted to the Zoning Board of Appeals for review and approval at a public meeting to determine whether a new Special Permit is required.

Tom Simpson, Chair
Amherst Zoning Board of Appeals

DATE